

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Oscar Perez-Marquez,

5 Plaintiff,

6 v.

7 Joe Lumbardo, et.al.;

8 Defendant.
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Case No. 2:23-cv-00938-CDS-BNW

**ORDER AND REPORT AND
RECOMMENDATION**

11 Presently before the Court is pro se Plaintiff's complaint and application to proceed in
12 forma pauperis. ECF No. 1.

13 **I. In Forma Pauperis Application**

14 Plaintiff submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to
15 prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed in
16 forma pauperis will be granted.

17 Based on the information regarding Plaintiff's financial status, the Court finds that
18 Plaintiff is not able to pay an initial installment payment toward the full filing fee pursuant to 28
19 U.S.C. § 1915. Plaintiff will, however, be required to make monthly payments toward the full
20 \$350.00 filing fee when he has funds available.

21 The Court now screens Plaintiff's complaint as required by 28 U.S.C. § 1915(e)(2).

22 **II. Screening**

23 In screening a complaint, a court must identify cognizable claims and dismiss claims that
24 are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary
25 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint is
26 frivolous if it contains "claims whose factual contentions are clearly baseless," such as "claims
27 describing fantastic or delusional scenarios." *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989).
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Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (*quoting Iqbal*, 556 U.S. at 678).

Here, Plaintiff challenges the constitutionality of Senate Bill 182 as facially defective. His complaint also notes he has already made this same challenge in another case in this District, 22-796-GMN-DJA.

There have been at least ten other, similar challenges to the Commission in this District; all have failed, and so does Plaintiff’s. *See Marquez-Perez v. Nevada*, No. 222CV00796GMNDJA, 2022 WL 14874980, at *2 (D. Nev. Oct. 25, 2022) (compiling cases). This Court will not reinvent the wheel. As Judge Navarro aptly noted,

The Nevada Supreme Court recently addressed a similar issue in *State v. Taylor*, 472 P.3d 195 (Nev. 2020) (table). In *Taylor*, the appellant claimed that his counsel was ineffective because they failed to challenge the constitutionality of the Statute Revision Commission. *Id.* at 195 at 5. There, the court held that the Justices sitting on the Commission did not violate a constitutional provision because “the Legislative Counsel Bureau — which succeeded the statute revision commission — codifies and classifies” laws “in a logical order, but not itself exercising the legislative function.” *Id.* The Court held that the trial court did not err in denying the appellant’s claim because she failed to show how the Commission “encroached upon the powers of another branch of government, violating the separation of powers.” *Id.*; *see Comm’n of Ethics v. Hardy*, 212 P.3d 1098, 1103 (2009) (“The purpose of the separation of powers doctrine is to prevent one branch from encroaching on the powers of another branch.”).

Id. at *2. Accordingly, the Court recommends that Plaintiff’s complaint be dismissed “because it lacks an arguable basis either in law or in fact.” *Id.* (citing *Igbinovia v. McDaniel*, No. 3:10-cv-00525, 2010 WL 5288167, at *2 (D. Nev. Dec. 17, 2010) (“All or part of a complaint filed by a

1 prisoner may therefore be dismissed *sua sponte* if the prisoner's claims lack an arguable basis
2 either in law or in fact.")).

3 **III. Conclusion**

4 **IT IS THEREFORE ORDERED** that Plaintiff's Application to Proceed in Forma
5 Pauperis (ECF No. 1) is GRANTED. Plaintiff will **not** be required to pay an initial installment
6 fee. Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by
7 the Prison Litigation Reform Act. The movant herein is permitted to maintain this action to
8 conclusion without the necessity of prepayment of fees or costs or the giving of security therefor.

9 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
10 Prison Litigation Reform Act, the Nevada Department of Corrections will forward payments from
11 the account of Oscar Perez-Marquez, Inmate No. 91579, to the Clerk of the United States District
12 Court, District of Nevada, 20% of the preceding month's deposits (in months that the account
13 exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of the Court
14 will send a copy of this order to the Finance Division of the Clerk's Office. The Clerk will send a
15 copy of this order to the attention of **Chief of Inmate Services for the Nevada Department of**
16 **Corrections**, P.O. Box 7011, Carson City, NV 89702.

17 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
18 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
19 Prison Litigation Reform Act.

20 **IT IS FURTHER RECOMMENDED** that the complaint (ECF No. 1-1) be DISMISSED
21 without prejudice.
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NOTICE

This report and recommendation is submitted to the United States district judge assigned to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation may file a written objection supported by points and authorities within 14 days of being served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

DATED: August 8, 2023



Brenda Weksler
United States Magistrate Judge